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Mr. William Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Mr. Caton:

Please include the attached letter in the record of the above-referenced proceeding.

Sincerely,

Carol

Carol A. Melton

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Thomas J. Morrow
President

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FEDERAL COMMUNICATIONS COMMISSION
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EX PARTE

June 13, 1996

Ms. Regina Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C.

Re: CC Docket No. 96-98

Dear Ms. Keeney,

Thank you for the opportunity to discuss Time Warner Communications' viewpoints and concerns on some of the key issues associated with the implementation of the 1996 Telecommuncations Act's Section 251&252 provisions. No other section of the Act are as critical to the development of local telephone competition as these two sections.

Attached are materials I believe will be helpful in clarifying our discussion. First, is a one-page summary of Mutual Traffic Exchange within a specified "zone of balance" and why it is a feasible compromise to full mutual traffic exchange, or bill and keep. Second is a brief description of key elements required by Time Warner Communications as a facilities-based service provider with plans to serve the mass market, i.e., residential and small business customers. In the interests of brevity, this focuses on the most critical elements. Our full comments filed in response to the NPRM address these issues in a more comprehensive manner

It is essential that, at a minimum, national uniform guidelines be established for these elements. The Commission should not let the fact that some parties are beginning to reach interconnection agreements dissuade them from establishing national uniform guidelines for Sections 251 & 252. The agreements being executed are generally for about a 2-year period, after which new agreements must be negotiated. Currently, the superior bargaining power of ILECs is somewhat mitigated by two factors: 1) ILEC desire to meet the Section 271 competitive checklist; and 2) ILEC desire to demonstrate to the Commission that agreements can be reached without national, uniform guidelines. However, when agreements are renegotiated in two years, the ILECs will be bargaining from an even stronger position. ILEC market power will be only slightly diminished and most likely they will have been allowed to enter in-region interLATA and cable markets. Without clear national guidelines, the new entrants may have little with which to hold the

Time Warner Communications
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A Time Warner Entertainment Company

superior bargaining power of the ILECs in check. For example, without a clear, uniform interpretation of the Section 252 pricing standards, ILECs could insist on prices based upon fully allocated, embedded costs, and seek to gain state commission acceptance of this concept through the arbitration process. This could result in different pricing standards for different states, and worse, a disparate swing in the cost of interconnection after the new entrant has committed the investment in its business. Changing the operating economics so dramatically would be lethal to embryonic competitors. In short, ILECs are most likely making short-term concessions now in order to gain interLATA entry and minimum national standards. Therefore, despite the fact that agreements are beginning to be established, the need for clear, national uniform guidelines remains just as critical.

If you or your staff have any questions, please call either myself, or Janis Stahlhut (203-328-4003) and Don Shepheard (203-328-4004) of our regulatory staff.

Sincerely,

Tom Morrow

Mutual Traffic Exchange Within a Zone of Balance

The Telecommunications Act of 1996 (the Act) requires "mutual and reciprocal recovery of costs" associated with the termination of competitors' local calls. The Act also designated that the cost of termination be based on the additional (or incremental) costs associated with terminating the call. While the Act recognized the value of a "bill and keep" arrangement, many commentors have argued that such an arrangement does not recover the costs of call termination in all cases. The best compensation arrangement would capture the benefits of both the recovery of costs, when warranted, and the efficiencies of an "in-kind" exchange of traffic when additional costs are *de minimus* and may be offset by the prospect of new transaction costs which unduly burden the new entrant.

Incumbent LECs (ILECs) fear *bill and keep* as a system of "free" interconnection which will disadvantage them in a niche-player marketplace where the balance of traffic can be grossly skewed by the new entrant. However, where traffic is relatively in balance, long run incremental costs are *de minimus* and a system of "**mutual traffic exchange**" is an efficient means of recovering costs. An agreement of **mutual traffic exchange** provides each carrier with a tangible economic benefit that, under certain circumstances, surmounts a cash payment.

Where competitive providers are serving a "mass" marketplace, i.e., residential and small business customers as the mainstay of their market mix, traffic will naturally be "in balance," regardless of the percent market share served by the new entrant. Also, since all of the traffic generated today is already carried on the one existing network, the long run incremental cost of terminating that same traffic, albeit now generated by a competitor, is *de minimus*. The transaction costs of auditing and billing compensation charges impose a relatively greater burden on new facilities-based entrants; and could exceed the benefits of a compensation rate, especially where the rate is based on long run incremental cost that are **de minimus** and where traffic is relatively in balance.

However, where competitive providers serve niche markets such as businesses generating large volumes of traffic in one direction (e.g., pizza parlors or local government offices), traffic is likely to become out of balance. As protection against the ILEC's fears that new entrants will niche-market to businesses with large terminating traffic needs, a zone may be established where traffic is presumed to be in balance. Traffic falling outside the "zone of balance" can be compensated at a rate that represents the long run incremental cost to complete the call or that is mutually negotiated between the parties.

The **zone of balance** is a way of recognizing that *de minimus* differences in terminating traffic do not justify the onset of transaction costs. Therefore, the initial threshold over which compensation rates would apply should take into consideration transaction cost levels as well as out-of-balance conditions.

Mutual traffic exchange within a zone of balance represents a workable compromise:

- if traffic is within the zone, no cash transaction is necessary; and
- if traffic is outside the zone, the party receiving the greater amount of traffic onto their network receives a cash compensation.
- transaction costs associated with compensation rates are minimized.

KEY BASELINE ELEMENTS OF A SECTION 251 INTERCONNECTION AGREEMENT[1] TO BE ADOPTED AS A NATIONAL UNIFORM GUIDELINE

Call Termination Compensation:

- Local transit calls will be compensated on the basis of Mutual Traffic Exchange. Cellular calls are treated as transit calls (or intermediary functions).
- Terminating local traffic will be compensated on the basis of Mutual Traffic Exchange. A "zone of balance" may be established whereby the difference between the traffic terminated by the parties which is within the zone of balance is compensated based on Mutual Traffic Exchange and traffic outside the zone may be compensated at a rate based on long run incremental costs or a rate negotiated by the two parties. A single rate shall apply to interconnection to both the tandem and the end office.
- The initial threshold of the zone over which compensation rates would apply must take into consideration the level of transaction costs incurred, as well as the out-of-balance conditions caused by interim number portability.
- Local Traffic is defined as any telephone call that originates and terminates in the same LATA and is billed by the originating party as a local call regardless of whether the call is rated as "local" by the ILECs, including any call terminating in an exchange outside the ILEC's service area with respect to which the ILEC has a local interconnection arrangement with an independent LEC with which the CLECs are not directly interconnected. The CLECs will use the NXX codes to determine local areas, but there is no "local/toll default" penalty language.
- The delivery of intraLATA toll traffic between the CLEC and ILEC shall be reciprocal and compensation will be mutual, based on the appropriate intrastate switched access charges.

Interconnection:

- The CLEC may elect to establish the point of interface for each central office through physical collocation, virtual collocation, mid-span meet point, or may purchase transport facilities. No nonrecurring fees associated with the reconfiguration of the CLEC's interconnection arrangement at any ILEC central office will be assessed.
- Interconnection for local and intraLATA toll traffic will be provided via one-way or two-way trunks. Two-way trunks will be established to exchange interLATA toll and meet point access traffic.
- The ILEC will allow the CLEC and all other carriers collocated at the same ILEC central office to directly connect their facilities at such central office for the purpose of exchanging local traffic without use of the ILEC tandem switch. Cross connect charges shall apply.

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[1] This list is not intended to be all inclusive. Rather it is a list reflective of the "bare minimum needs" of a facilities based carrier with intent to serve the mass market, i.e., residential and small business customers. In addition, many operational issues that will play a crucial role in the successful agreement are not, in the interest of brevity, shown here.

- The ILEC shall provide 45 days written notice to the CLEC before making any changes to the ILEC's network configuration that may have an impact on the CLEC's interconnection, facilities, network, or operations.

Interim Number Portability:
- Remote call forwarding and DID charges will be negotiated on the basis of TSLRIC studies.
- Nonrecurring charges will not apply.
- In the case of IXC traffic terminating to the CLEC's ported numbers, provisioning will be established for billing of the appropriate switched access charges by the CLEC.

Directory Listings and Directory Distribution:
- The CLEC customers' primary listings shall be included in the appropriate ILEC white page (residence and business listings) or alphabetical directories, as well as the ILEC directory assistance database.
- The CLEC business subscribers' listings will be included in all appropriate ILEC Yellow Pages or classified directories.
- Copies of directories shall be delivered to the CLEC's customers.
- All of the above will be provided without charge.
- Directory listing information shall be provided between ILEC and CLEC in a mutually acceptable format and timeframe.
- The ILEC shall include the CLEC's customers in directory assistance databases associated with the areas in which each CLEC provides Exchange Services to such customers within the same time frame as it includes its own customers in such databases at no charge.

Performance Standards:
- Repair frequencies and repair intervals shall be specified in all Agreements.
- Installation intervals shall be specified in all Agreements. For example, customer disconnects and provisioning of interim number portability shall take place within 24 hours of the ILEC's receipt of a Service Order to do so.
- Non-performance criteria shall be defined and penalties for such non-performance shall be specified in all agreements.

More Favorable Provisions:
- The CLEC may substitute more favorable terms and conditions as a result of any proceeding before any Court, Commission, or FCC, voluntary agreement or arbitration proceeding pursuant to the Act or pursuant to any applicable state law, whether or not presently covered by this Agreement. If the more favorable provision is a result of the action of an appropriate regulatory agency or judicial body, whether commenced before or after the effective date of the Agreement, after the waiver or exhaustion of all administrative and judicial remedies, the Parties agree to incorporate such order in this Agreement as of its effective date.